

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

STEPHANIE D. DYE,

Plaintiff,

MICHAEL J. ASTRUE, Commissioner of
Social Security,

Defendant.

CASE NO. C10-5075 RJB

ORDER FOR EAJA FEES, COSTS AND EXPENSES

This matter comes before the Court on the Report and Recommendation of United States Magistrate Judge Karen L. Strombom that Plaintiff motion for attorney's fees and expenses pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, be granted in part. Dkt. 45. The Report and Recommendation finds that the Commissioner's position was substantially justified until the subsequent favorable disability decision which was based on new evidence was issued on April 20, 2011. *Id.* at 7-8. Based on this new evidence the Commissioner and Plaintiff stipulated to a remand for further administrative proceedings. *Id.* at 1-2. The Magistrate Judge finds that Plaintiff is entitled to attorney's fees incurred subsequent to April 20, 2011, in the

1 amount of \$5,580.23. *Id.* at 9. In addition, Plaintiff is entitled to attorney's fees in the amount of
2 \$1,444.72 for work done in regard to her motion for attorney's fees and Defendant's motion for
3 correction, resulting in a total attorney's fee award of \$7,024.95. *Id.* Plaintiff is entitled to costs
4 and expenses incurred subsequent to April 20, 2011. *Id.*

5 Both Plaintiff and the Commissioner have filed objections to the Report and
6 Recommendation. Plaintiff asserts that because the Commissioner stipulated to the remand, the
7 Commissioner has conceded error and the Commissioner's position cannot be substantially
8 justified at any point in these proceedings. Dkt. 48 pp. 2-6. The Commissioner asserts that its
9 position was justified throughout and Plaintiff should not be awarded fees. Dkts. 50 and 52.

10 The Court is not persuaded by the objections of either party and adopts the Report and
11 Recommendation. The stipulated remand was premised on further administrative proceedings to
12 consider new evidence presented in the subsequent application that was not available for review
13 in the current case. See Dkts. 30 and 36-1. This new evidence arose as of the date of the
14 subsequent favorable disability decision, April 20, 2011. Other than the concession that this new
15 evidence warranted remand for further administrative proceedings, the Commissioner's position
16 and the ALJ's decision have been previously determined to be supported by the evidence and
17 free of error. See Dkt. 20 and 26. The Commissioner has established his position to be
18 substantially justified up to the date that the new evidence placed him on notice of the potential
19 impact of this evidence on Plaintiff's initial claim. Plaintiff's objection lacks merit. The
20 Defendant's objection also lacks merit. The stipulation for remand was premised on the new
21 evidence that arose from the subsequent favorable disability benefits decision. The agreement to
22 remand the matter for further consideration necessarily recognizes the lack of justification in the
23 Commissioner's position after April 20, 2011.

1 The Court, having reviewed the Report and Recommendation of Judge Karen L.
2 Strombom, United States Magistrate Judge, objections to the Report and Recommendation, and
3 the remaining record, does hereby find and **ORDER**:

- 4 (1) The Court adopts the Report and Recommendation (Dkt. 45);
5 (2) Plaintiff is hereby awarded attorney's fees under the EAJA in the amount of \$7,024.95,
6 along with any costs and expenses that can be shown to have been incurred during the
7 period after April 20, 2011;
8 (3) Subject to any offset allowed under the Treasury Offset Program, as discussed in *Astrue*
9 *v. Ratliff*, 130 S. Ct. 2521, 560 U.S. __ (2010), payment of the above award shall be
10 made directly to Plaintiff's attorney Eitan Kassel Yanich either by direct deposit or by
11 check sent to Eitan Kassel Yanich's address: Eitan Kassel Yanich, PLLC, 203 Fourth
12 Avenue E., Suite 321, Olympia, WA. 98501;
13 (4) The Clerk is directed to send copies of this Order to Plaintiff's counsel, Defendant's
14 counsel and Magistrate Judge Karen L. Strombom.

15 Dated this 20th day of August, 2012.

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18 ROBERT J. BRYAN
19 United States District Judge
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